

Mining Reclamation Newsletter



INTRODUCTORY ISSUE

News Briefs

February 2003

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1. [Purpose of Newsletter](#)

The Nonmetallic Mining Reclamation Program has developed a newsletter to broadly share information between regulators, mine operators, and the public. This newsletter can be used to raise and resolve general issues, broadcast announcements, provide reclamation advice, in addition to many other possibilities. Another function of the newsletter is to address the on-going need to keep everyone posted on upcoming fee and reporting deadlines, training opportunities, conferences, as well as Nonmetallic Mining Advisory Committee meetings.

The Mining Reclamation Newsletter will be again next month followed by quarterly publication.

2. [Program Purpose and Background](#)

In April 1994, the Wisconsin Legislature required the DNR to establish a statewide program to ensure that reclamation of nonmetallic mining sites is completed in a consistent manner throughout the State. This program is intended to eliminate future abandoned mine sites and minimize safety hazards and pollution.

3. [What does program consistency mean?](#)

Sometimes it is hard to realize that reclamation at two sites in two different parts of the state may be consistent with reclamation standards and not look the same. This is because consistency is more a function of a known and predictable process to produce and review reclamation plans, which contain similar sets of information (maps, reclamation measures, financial assurance, etc.). Because there is so much variability due to post-mining land use, type of mine, variability in the physical and socioeconomic environment, often it is not possible to look casually at a reclamation situation and decide whether it is "consistent" with one in another part of the state or not.

4. [DNR's Role](#)

Prior to implementation of Chapter NR 135, the DNR's role, as mandated by the Wisconsin Legislature, was to establish rules that would contain uniform, statewide reclamation standards and requirements for administering local reclamation programs. Currently, the DNR will continue to provide training, technical support, and ensure overall program consistency statewide through program review audits.

5. [More Information](#)

If you would like to learn about developing or reviewing reclamation plans and financial assurance, or how to contact the Nonmetallic Mining Advisory Committee or get your issue on the next meeting agenda, begin by exploring the Department's Nonmetallic Mining Web site.

6. **Announcements**

- February 19: Nonmetallic Mining Advisory Committee (NMAC) [meeting in DeForest](#).
- **February 13** - 10 am and **February 14** - 1 pm); (Fond du Lac, Madison, Rhinelander, Wisconsin Rapids); **March 5** (10 am) (Fennimore, Green Bay, Madison, Wausau, Spooner). In order to better fit your schedules and to provide more locations for your convenience this training will be repeated on 3 separate days and at numerous locations. Please contact DNR regional staff for directions.

A 2 hour video conference training program has been selected and scheduled as the most cost-effective method to address training needs of regulatory staff, and others who previously did not receive DNR training. This training is timely because reclamation plans are now being prepared, submitted, and reviewed in accordance with timelines established in local ordinances for sites with automatic reclamation permits. The focus of the *February 13 and 14* video conference training will be on reclamation plan review and permit decision-making, review of proposed financial assurance, as well as other implementation issues. The *March 5* training will be focused on addressing operator needs for preparation of reclamation plans and financial assurance.

7. **"Heads-up"**

Fees collected from operators on unreclaimed acreage as of December 31, 2002 are due to the DNR on or before March 31, 2003.

Program review audits of selected regulatory authorities will be conducted by regional staff beginning in early 2003, contact regional staff for more information.

8. **Suggestion Box**

We need your help and involvement in order to improve the DNR's outreach capabilities. Please send us any ideas, questions, announcements, topics, or comments. In addition, we encourage you to submit ideas for a **Newsletter Name**. The next, newly named newsletter should be published in about a month. Responses can be emailed to Tom Portle (email: Thomas.Portle@dnr.state.wi.us)

Purpose of Newsletter: by Tom Portle

The Wisconsin Department of Natural Resources strives to provide technical support and facilitate communication in order to enhance nonmetallic mine reclamation throughout the state. One approach to this is to publish an electronic newsletter. This was decided to be the most cost-effective approach given that access is available to more users who are becoming increasingly more comfortable with this format.

During our August 1, 2002 Nonmetallic Mining Advisory Committee (NMAC) meeting the Department was advised to increase and enhance outreach. Members of the NMAC and the public (operators, regulatory authority staff, and consultants) who participated in the meeting requested that the Department provide a variety of outreach products. It was felt that a newsletter and other outreach efforts are especially important during early program implementation. As reclamation plans are submitted for review and approval there will be many specific issues or questions that will require resolutions or answers. This newsletter will be used to share this information.

Beyond this, we continue to receive indications that a number of county and municipal staff lack a clear and detailed understanding of the reclamation program. This may be partially due to the time elapsed since that training (fall of 2000) and the fact that many staff now involved did not have the opportunity to attend the initial training in fall of 2000. To address these needs, it is our hope that the newsletter can act both as a vehicle to connect regulatory staff with information sources they need, and to broadly share information on program implementation issues. For example, if there are code interpretations that are arrived at these can be made widely available. In doing so, there are potential benefits to be gained through improved efficiency and consistency - time, energy, research and problem solving efforts would not have to be repeated.

Another function of the newsletter is to address the on-going need to keep everyone posted regarding upcoming deadlines, training opportunities, conferences, NMAC meetings and so forth.

In publishing this newsletter the intent is to NOT make a permanent commitment regarding publication frequency. Instead, it will be published monthly for the first 2 or 3 months and then reduced to an as needed basis but not less than quarterly.

Program Purpose and Background: by Tom Portle

On April 28, 1994 then Governor Thompson signed 1993 Wisconsin Act 464 into law regulating nonmetallic mining reclamation and requiring the Department to adopt rules. The Legislature established a statewide reclamation program to ensure that all nonmetallic mining sites in Wisconsin be reclaimed. The Legislature intended that this statewide nonmetallic mining reclamation program: be based on county and local ordinances, result in a level playing field and a known set of expectations for all affected parties; and prevent future abandoned mine sites. It was felt that this was better

accomplished at the county and municipal level rather than by creating a state administered program. That way it is more in tune with local needs and in keeping with the desire for local control.

The Legislature mandated that the DNR write the rules containing uniform statewide reclamation standards and requirements for administering local reclamation programs. The Department drafted proposed Chap. NR 135 with the assistance of a technical advisory committee (TAC). In January 1995 DNR staff obtained authorization to take the rule that was required by statute to public hearing. Hearings were held in April and May of 1995.

There was substantial concern raised at the public hearings and in written comments received by the Department with this proposed rule. As a result of comments, the DNR decided to seek advice on improving the enabling legislation. Most of the issues were related to areas where there was limited rule drafting flexibility due to statutory requirements. In November, 1995, Department staff began working with the Nonmetallic Mining Council (Council) which had been recently appointed by the Governor. The Council met in joint session with the TAC. Following extensive consultation, these legislative changes were included in the 1996-97 Budget Bill, 1997 Act 27.

Following rule revisions pursuant to Act 27, public hearings on proposed Ch. NR 135 were held in May 1998. In September 1998 the Natural Resources Board considered final approval of the rule but tabled it in order to resolve an issue raised by the Wisconsin Transportation Builders on expediting permitting for mining related to local transportation projects. The agreed-on solution required additional legislation, which was included in 1999 Act 9, which became effective in November 1999. On December 8, 1999, the Natural Resources Board approved the rules as amended by Act 9, with the provision that it should become effective December 1, 2000, as requested by the Wisconsin County Code Administrators.

The Nonmetallic Mining Reclamation Rule, Chapter NR 135, sets forth uniform reclamation standards for all nonmetallic mining operations in Wisconsin. These reclamation standards are to be implemented by a county or municipal regulatory authority through a reclamation ordinance. The reclamation program is mandatory for counties and voluntary for cities, villages and towns. The Legislature felt that local control would better serve both operators and citizens. Because NR 135 clearly places the responsibility for site reclamation on industry, by requiring a reclamation plan, fees to fund local reclamation programs and a financial guarantee, the taxpayers will no longer be adversely affected by or be forced to pick up the tab for the mitigation of abandoned sites. For more information, please refer to a Department publication that contains a more detailed [program summary \(available in PDF format\)](#).

All reclamation will be accomplished in a manner that complies with performance based uniform statewide reclamation standards. Performance based standards, as opposed to prescriptive standards, are by their nature flexible. This flexibility is based upon the specific reclamation requirements dictated by both the approved land use and unique site

conditions. This approach acknowledges the site-specific nature of mining sites and encourages cost effectiveness through innovation in the mine reclamation plans that the operators develop to meet the standards. For more information please see the [Frequently Asked Questions](#) on the Nonmetallic Mining Web site. All mines must have a reclamation permit in order to continue or begin mining. The reclamation permit is based on the reclamation plan. The reclamation plan is the vehicle to ensure that all necessary steps are taken to ensure that the approved land use is achieved. Thus, the post-mining land use will dictate the level of detail required in the reclamation plan. The reclamation of the mine is performed in a manner consistent with uniform statewide reclamation standards and in accordance with the approved plan.

What does program consistency mean? By Dave Misterek

During Chapter NR 135 rulemaking, the representatives of county and municipal government felt strongly that for the reclamation program to be a success they needed adequate discretion in program implementation. This was in keeping with the Legislative intent that there be local control and flexibility built into the rule and local ordinances. Therefore, the rule and ordinances are written with performance based criteria, rather than being prescriptive. This flexibility is considered very important in maintaining property rights and in reflecting the variability found in Wisconsin's geography, geology, heritage, traditions, and local customs.

Since the uniform standards for mine reclamation are flexible, there will be a lot of variability owing to the different post-mining land uses. Different post mining land use targets imply different final slopes, soil depth and quality needs, and vegetation. To accomplish this, different construction methods and success standards may be selected by the nonmetallic mine operator and written into the plan that is reviewed, modified if necessary, and approved. Indeed, this is exactly why the reclamation criteria are performance based rather than prescriptive. It was important that owners of nonmetallic mining operations be allowed to prepare a reclamation plan that reflects their needs and desires for the final land use. It was equally important that the plan be reviewed and approved by local municipal staff who are familiar with the land and needs of the community.

Even though some operators will select similar or identical post-mining land uses, the actual reclamation plan details are likely to differ significantly. In addition, regulatory program details, such as contour intervals on maps will vary from one jurisdiction to another. The discretion and flexibility that is given by the Legislature to county and local regulatory authorities implies that there can be many appropriate and acceptable ways to get to the desired reclamation end point. A reclamation program in one jurisdiction may favor a less detailed approach, as compared to another program, and still be consistent in ensuring that the approved reclamation plan is implemented properly and is in compliance with the reclamation standards.

Will there be differences in how programs are administered from one part of the state to another? Yes. But differences can still be within the limits of NR 135. In order for this program to be fair it must be consistent. For this reason, the Department of Natural Resources was given the charge to provide technical support, and the authority to perform program oversight on a statewide basis. The object of DNR oversight is to ensure that the uniform reclamation standards are reflected in the local ordinances and that the ordinances are properly administered. Local ordinances are restricted from being either too prohibitive or too permissive, and are intended to be consistent throughout the state.

In practice, consistency in administration of nonmetallic mine reclamation programs must be a function of a known and predictable process with known expectations, regarding outcomes (environmental protection and successful reclamation) throughout the state. This process relies upon consistent decision-making procedures and a set of criteria that produces a fair result. For these programs to function properly, flexibility and consistency must work hand in hand. In doing so, we need to remember that every municipality that has developed an ordinance must adhere to the minimum standards in the rule and their ordinance, but they must also have the flexibility to administer the program to provide for the environmental quality and needs of their community.

In summary, the outcomes of this program are meant to be fair, reasonable, and environmentally sound. Toward this end, ongoing efforts at outreach, communication, and, most importantly, sharing the lessons learned from the collective experience of operators, regulatory authorities, and the Department will be the most effective means to promote consistency in reclamation results and fairness in implementation.

DNR's Role: by Dave Kunelius

The Legislature mandated in Chapter 295, Wisconsin Statutes, that the DNR write rules containing uniform statewide reclamation standards and requirements for administering local reclamation programs. This was accomplished in Chapter NR 135, Wisconsin Administrative Code, which became effective in December 2000. Following this, the DNR provided training and technical support to help in establishing these programs. Support included providing model ordinances that could be used to establish mandatory county and voluntary municipal programs. These local reclamation programs had to be adopted and in place so that operators could apply for automatic permits by August 1, 2001. Now that county and municipal ordinances have been adopted, the Department continues to be engaged in the program by providing ongoing training and technical support process.

Further, the DNR is required by law to conduct program review audits for each county and municipal program to assure that the uniform reclamation standards are complied with across the state, and that the reclamation programs are administered adequately and fairly. This includes addressing the issue of ensuring that acreage fees collected from operators are commensurate with the actual costs of administering the program. The Department is required by law to assume administration of county programs in the event

that the county is determined to be out of compliance as a result of this audit and review process. If a city, village, or town is found to be out of compliance, the Department would require the county to take over administration of the program in that jurisdiction.

More Information: by Ryan Jakubowski

Part of the Department's goal is to provide technical assistance necessary to support the county and municipal nonmetallic mining reclamation programs, in addition to addressing the concerns and needs of mine operators. Informational materials can be found at the Department's Nonmetallic Mining Web site, and are described in detail below: <http://www.dnr.state.wi.us/org/aw/wm/mining/nonmetallic/index.htm>.

- Program Summary, DNR contact information, and regulations
- Nonmetallic Mining Advisory Committee
 - Meeting date, location, and tentative agenda
 - Purpose and role
 - Contact information
 - Previous meeting minutes
- Developing **Reclamation Plans**
 - Reclamation Plan Checklist, APPENDIX A
 - General Information and Resources, APPENDIX B
 - Guide to Plant Selection, APPENDIX C
 - Revegetation Success Criteria, APPENDIX D
- Preparing and reviewing **Financial Assurance**
 - Helpful References, ATTACHMENT A
 - Estimate Summary Table, page 7
 - Calculation Worksheet (Excel file that will automatically perform multiplication and addition is available from the DNR), ATTACHMENT B
 - Typical Cost Estimates, ATTACHMENT D
- Frequently Asked Questions
- Publications

**"To keep every cog in the wheel is the first prerequisite of intelligent tinkering."
ALDO LEOPOLD**

